

July 24, 1992
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED AMENDMENTS TO CHARTER SECTION 55 - ROADS THROUGH
DEDICATED PARKS

At the Council meeting on Monday, July 20, 1992, the City Council reviewed proposed amendments to Charter Section 55. A number of questions were asked regarding the meaning and intent of the proposed amendments.

Attached as Enclosure (1) to this Report are proposed amendments recommended by the task force established to review existing Charter Section 55 and make suggested changes. The proposed amendments in Enclosure (1) were approved by the Park and Recreation Board.

Some of the questions raised on July 20th were:

1. Would a "spur" road from an existing road in Mission Bay Park, needed to serve a new hotel or other tourist facility, require a vote of the electorate?

The intent of the language proposed in Enclosure (1) is to require a majority vote of the electorate for the creation of any new "non-park roads" through dedicated parks. The language proposed in Enclosure (1) does not specifically address new "park roads." We have been of the opinion that any new road which primarily serves a park purpose constitutes a proper park use and can be approved by simple majority vote of the City Council in connection with any proposed park development. However, these proposed amendments may cause us to reconsider this view. One can certainly argue that the proposed amendments may limit the Council's prerogatives and authority in this regard. In order to clarify this issue the following language could be added:

Anything to the contrary in
this section notwithstanding, the
City Council shall have the right
after holding a noticed public
hearing to establish roads in
dedicated public parks which roads
are determined by the City Council,
based upon factual information

provided at the noticed public hearing, to be needed for the primary purpose of accommodating park visitors rather than for the primary purpose of accommodating travellers from one side of a park to another area beyond a park.

2. It was requested that exemptions or exceptions to the proposed requirement for a vote of the electorate for new non-park roads in dedicated parks be explained.

The proposed amendments contained in Enclosure (1) do not provide for any exemptions or exceptions. Therefore, if the language proposed in Enclosure (1) is approved, a majority vote of the electorate would be required in the future in order to dedicate a new non-park road through any previously dedicated park. However, the language proposed in Enclosure (1) would not preclude the City Council from, by majority vote, dedicating new streets through any property which has not yet been officially dedicated by ordinance to park and recreation use.

3. Several questions related to the language proposed in Enclosure (1) and its impact, if any, on streets which are presently shown on approved community plans where the property shown as park on an approved community plan has already been officially dedicated to park and recreation use.

The Enclosure (1) amendments would require a majority vote of the electorate to establish a "non-park" road through any such park. The following language could be added to provide an exception for roads presently shown on approved community plans:

For the purposes of this section, roads designated on approved community plans as of December 31, 1992, may be officially set aside and dedicated and improved at a later date without a special vote of the City Council or the electorate.

4. A question was raised as to the meaning of the phrase "is deemed contrary to the public interest" in Enclosure (1).

It is our opinion that the paragraph in which this phrase is contained, when read in full, is clear that the determination of whether official dedication of the park should occur is a factual determination to be made by the City Council and that the Council may, based upon any facts provided to the hearing on the proposed dedication, make a valid determination that immediate dedication is in fact "contrary to the public interest."

An example could be the existence of hazardous conditions

on a proposed park site. By officially dedicating the property to park and recreation use the Council could be considered to be inviting the public to use the property. In some circumstances, in particular where potentially hazardous conditions exist, it is our recommendation that such sites not be officially dedicated until the hazards are mitigated. Such dedication could be construed as "contrary to the public interest." However, the paragraph implies that dedication is favored unless such a "contrary to the public interest" finding can be supported by the facts about the property or its environs.

5. The question arose as to the difference, if any, between "streets" and "roads" as used in Enclosure (1).

The two words are, in our view, synonymous.

6. The term "open space" as used in paragraph 1 of Enclosure (1) is intended to mean open space property which is "owned, controlled or operated by the City." The phrase "dedicated open space" which is in the last paragraph of Enclosure (1) was requested by the task force but seems to us to be unnecessary and perhaps confusing from a legal standpoint. Property is, in accordance with Charter Section 55, dedicated to "park and recreation use" rather than to any particular form of park and recreation use, such as open space, and the use of the phrase "dedicated open space" could create an anomaly in the future.

Enclosure (2) is a copy of a version of the proposed Charter amendment with the two changes described above relating to the establishment of park roads and relating to an exception for roads shown on approved community plans. Enclosure (2) also deletes the reference to "dedicated open space."

Respectfully submitted,

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Attachments 2

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